Court No. 3

Criminal Misc. Application No. 220 of 2003

Ramesh Chandra Sharma .....Petitioner.

Vs.

State of Uttaranchal and another .....Respondents.

Hon'ble Irshad Hussain, J.

This is a petition to challenge the summoning order dated 17-10-1995 passed by First Civil Judge (J.D.) Haridwar on finding prima facie case to proceed against the petitioner for an offence punishable under section 406 I.P.C.

(2). Heard Sri Vivek Shukla learned counsel for the petitioner and the learned A.G.A.

(3). The written complaint was filed by respondent No.2 whose daughter suffered unnatural death and the husband of the deceased along with father-in-law, the present petitioner and another were arraigned as accused on investigation by the police. The husband of the deceased was declared absconder. However, the petitioner and another accused were acquitted by the Sessions Judge. The death of the deceased had occurred on 28-1-1992. The present complaint was filed on 30-6-1995 by the respondent No.2 alleging that the Stridhan of his daughter had been illegally retained by the petitioner, the father-in-law of the deceased and on demand the same was not being returned. Against the summoning order protest petition was filed. The same was dismissed. The revision was preferred by the petitioner before the Sessions Judge which was also dismissed on finding that the summoning order was based on proper appraisal of the material available on record.

(4). The learned counsel for the petitioner submitted that the complaint was time barred in view of the provisions of section 468 of the Criminal Procedure Code. The offence alleged is of criminal breach of trust which has recurring cause of action in view of the fact that as per allegation the petitioner was trustee of the property of the deceased daughter of respondent No.2 and the cause of action arose when the petitioner refused to part with the property and to return the same to respondent No.2 complaint. Apparently the complaint

was not time barred. Moreover the husband of the deceased had still been absconding and prima facie there was evidence to show that the Stridhan was being withheld the petitioner, who is alleged to have misappropriated the same. considering this, there was no impropriety in passing the summoning order and taking the cognizance thereof against the petitioner. Moreover the petitioner shall have an opportunity to put forward his defence when evidence under section 244 of the Code of Criminal Procedure is produced and the learned Magistrate at that stage may consider as to whether there are sufficient grounds to frame charge against the petitioner or not and then an appropriate order may be passed. At this stage there is no merit in this petition and the same is liable to be dismissed.

(5). The petition is dismissed in limine.

(**Irshad Hussain, J.)**

Dated: 30-9-2003

ISB